



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 14-01489
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

November 6, 2014

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 37-year-old employee of a defense contractor. Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for Financial Considerations. His request for a security clearance is granted.

Statement of the Case

On June 16, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective September 1, 2006.

Applicant answered the SOR on July 12, 2014 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on September 2,

2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 5, 2014, scheduling the hearing for October 16, 2014. The hearing was convened as scheduled. The Government offered hearing exhibit (HE) I and Exhibits (GE) 1 through 5, which were admitted without objection. Applicant offered Exhibit (AE) A, which was admitted without objection. Applicant testified. The record was left open for Applicant to submit additional exhibits. On October 30, 2014, 2014, Applicant presented two additional exhibits marked AE B and AE C. Department Counsel had no objections to AE B or AE C and they were admitted. DOHA received the transcript of the hearing (Tr.) on October 27, 2014.

Findings of Fact

Applicant is a 37-year-old employee of a defense contractor. He has worked for his employer since May 2012. He served in the Army for 10 years and achieved the rank of sergeant first class, E-7. He was honorably discharged in 2006. He is divorced and has one teenage son. He possesses a bachelor's degree awarded in 2011. (GE 1.)

As stated in the SOR, Applicant was alleged to be in debt to seven creditors in the approximate amount of \$28,625. Applicant admitted all of the debts listed in the SOR subparagraphs, with explanations. His debts are found in the credit reports entered into evidence. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact. (Answer; GE 2; GE 4; GE 5.)

Applicant married his wife in 1997, at age 20. They were together for the duration of his military service. In 2006, Applicant and his wife agreed that he would separate from the Army and pursue his education. He had previously supported his wife while she went to school and she planned to work so that now he too could attend college. He enrolled at a local college. He found that he had difficulties focusing and paying attention, and was required to take remedial classes before he could begin courses in his chosen major. Further, in mid-2006, Applicant and his wife separated. A divorce decree was entered on December 26, 2006. (GE 1; Tr. 18-25, 33-39.)

In the divorce decree, Applicant was assigned all of the marital debt and required to pay child support. However, he was attending school and unemployed at that time. He relied on credit cards to pay expenses like his car payment for a while, until he realized in 2008 that he simply could not afford to maintain the minimum payments required. He stopped making payments on his credit cards and vehicle loans. His vehicle and his ex-wife's vehicle were repossessed. (Tr. 22-27.)

After Applicant graduated in 2011, he obtained a job, but did not earn enough to make payments on his debt. When he was hired by a government contractor in May 2012, he began looking into his options for how to resolve his delinquencies. In March 2014, he met with an attorney who reviewed his finances and suggested Applicant file bankruptcy. Applicant filed Chapter 7 bankruptcy in June 2014, including \$107,590 in liabilities. The bankruptcy list of creditors included each of the delinquent debts in the SOR. All of Applicant's SOR listed debts were discharged by the United States Bankruptcy Court on October 7, 2014. (GE 7; AE A; AE B; Tr. 23-25, 36-45.)

Applicant completed financial counseling as required by the Bankruptcy Judge. He testified that he completed a series of financial courses on-line. In those courses, he learned how to better budget his funds and was better able to understand how he got into debt. He no longer spends beyond his means. He is current on his child support obligations. He no longer holds any credit cards. He drives an older vehicle that he purchased with cash. He has \$3,000 left at the end of the month, now that his debts have been discharged in bankruptcy, and he is saving his monthly net remainder. He lives simply and intends to remain solvent in the future. (Tr. 48-52.)

Applicant's DD-214 reflects that he was awarded the Meritorious Service Medal; two Army Commendation Medals; four Army Achievement awards; three Good Conduct Awards; the National Defense Service medal; the Kosovo Campaign medal; and the Iraq Campaign medal, among his many decorations and awards. He was deployed to both Kosovo and Iraq during his service. (AE C.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18, as follows:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant’s delinquent debts began accumulating in 2007 when was unable to satisfy his bills while unemployed. He stopped making payments on his debts in 2008, when he could not make ends meet. He has a history of debt that he was unable to resolve for a seven-year period. The evidence raises security concerns under both of these conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

Three Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances; and

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control.

Applicant's delinquencies resulted from a combination of unique circumstances that are unlikely to recur. Applicant left a highly successful period of service in the Army, and relied on his wife to support him while he attended school. However, his wife filed for divorce shortly thereafter. He was unexpectedly saddled with both the marital debt and child support payments. Applicant was unemployed for a number of years while he completed his education. Applicant now has a well-paying, full-time job. He has a significant monthly net remainder. It is unlikely he will be in a similar situation in the future. His current judgment and trustworthiness are not in question. AG ¶ 20(a) applies.

AG ¶ 20(b) focuses on delinquencies that result from events that an applicant could not control. Here, several events affected Applicant's ability to maintain financial solvency, including his divorce and his unemployment, which made it difficult for Applicant to live within his means. Applicant acted responsibly under the circumstances. He worked hard to finish his degree so that he could obtain a job and address his debts. When he found himself in a better financial situation, with a higher paying job, he consulted an attorney who advised him he should file Chapter 7 bankruptcy. He followed that advice. He completed financial counseling during his bankruptcy proceedings and testified about the knowledge he gained during that course. He now lives frugally and saves his substantial monthly surplus. He discharged his debt legally through bankruptcy. Under the circumstances, Applicant acted responsibly. AG ¶ 20(b) applies.

Applicant sought financial guidance and counseling about how to handle the debts from his attorney. He followed his attorney's advice and filed a Chapter 7 petition. Applicant's debts are under control, as all of his delinquent debts were discharged in October 2014. Moreover, Applicant is employed, and has a substantial monthly remainder. Applicant brought his financial situation under control. AG ¶ 20(c) applies.¹

¹ Applicant's bankruptcy discharge does not fall under AG ¶ 20(d), as the Appeal Board has held that "[a]n applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the good-faith mitigating condition]." It more accurately falls under AG ¶ 20(c), showing that the financial problems are either resolved or under control.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant served honorably in the Army for 10 years. He deployed to both Kosovo and Iraq. He has received a number of awards and recognition for his service. While he experienced financial problems after he left the Army to attend school, brought on mostly by an unexpected divorce, Applicant has resolved his delinquent debt through bankruptcy. He now lives frugally. He does not have any credit cards. No new debts have been incurred. He has sufficient income to insure that there is little likelihood of recurrence.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concerns. I conclude the whole-person analysis for Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Jennifer I. Goldstein
Administrative Judge